

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.337 OF 2004

Nicholas B.Almeida.
Petitioner.

...

Vs.

Union of India & Ors.

...Respondents.

....

Mr. Shekhar Naphade i/b. Nivit Srivastava for the Petitioner.

Mr. Rajiv Chavan with Mr. Suresh Kumar for Respondent No.1 & 2.

Dr.Virendra Tulzapurkar with Mr. Sanjay Kadam i/b. Kadam & Co. for Respondent No.4.

Mr. V.R. Dhond i/b. Sunil Waghmare for Respondent No.5.

Mr.Ravi Kadam i/b. Murudkar & Co. for Respondent No.6.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 1, 2004.

P.C.:

This petition purports to have been filed in the public interest in order to seek the issuance of a writ of mandamus (i) directing the Union of India to revoke the F.M. Radio licence issued to the Fourth Respondent; (ii) directing the Union of India to initiate an inquiry into the shareholding pattern, control and management of Companies set out in Exhibit "D" to the petition in order to

ascertain whether the Star Group of Companies have violated the Foreign Direct Investment Policy; (iii) directing the Union of India to disclose on oath, the reasons for the delay in certain arbitration proceedings with the Fourth Respondent; (iv) directing that the papers in the arbitration proceedings be produced before the Court for scrutiny and decision; (v) permitting the Petitioner to intervene in the arbitration proceedings between the Union Government and the Fourth Respondent; and (vi) directing the Union of India to disclose information collected in relation to the allegations made by the Petitioner.

2. We are not persuaded that this is a fit and proper case for the exercise of our jurisdiction under Article 226 of the Constitution. For one thing, we are not satisfied about the bona fides of the Petitioner in moving this Court. The Petitioner claims that he has “been serving in the social field for a number of years in Mumbai and is thus directly concerned with the subject matter”. He claims that he has “a special concern about financial and economic resources and security and sovereignty of the country”.

The attention of the Court has been drawn in the affidavit filed by the Fourth Respondent to the fact that the Petitioner had instituted Writ Petition No.1750 of 2000 for stopping the broadcast of a quiz show “Kaun Banega Karodpati”. The petition was dismissed by an order dated 21st March 2001 passed by a Division Bench of this Court consisting of Chief Justice B. P. Singh (as the Learned Judge then was) and Smt. Justice Ranjana Desai. In the affidavit, it has been alleged that the earlier petition was motivated and instituted at the instance of a rival channel. Moreover, it is submitted that it is rather peculiar that the Petitioner has filed both the said public interest petitions against the Sixth Respondent.

3. However, even apart from the serious doubt which we entertain in regard to the bona fides of the Petitioner, we are of the view that the exercise of our jurisdiction is not called for in the facts of this case. In the affidavit filed on behalf of the Union Government in the Ministry of Information and Broadcasting, it has been stated that the First Respondent auctioned 108 Frequencies at 40 locations. The Fourth Respondent has four operational FM

Radio Stations at Delhi, Mumbai, Lucknow and Bangalore for each of which, there is a Licence Agreement. A complaint was received by the Ministry on 10th June 2002 to the effect that the Fourth Respondent was indirectly promoted by the Star TV group, owned by Mr. Rupert Murdoch, in order to avoid direct entry restrictions. A notice to show cause was issued to the Fourth Respondent on 3^d September 2003, calling upon the latter to explain why action should not be taken for a violation of the terms and conditions of the Licence Agreements. The Fourth Respondent thereupon moved four Arbitration Petitions under Section 9 of the Arbitration and Conciliation Act, 1996, before this Court (Arbitration Petition Nos.421 to 424 of 2003) in which a Learned Single Judge of this Court granted relief in terms of prayer clauses (a) and (b) restraining the Union of India from terminating the Licence Agreements pending arbitration and from invoking or encashing the Bank Guarantee furnished by the Fourth Respondent. During the course of the hearing of the present proceedings, the Court has been informed that the Union Government has preferred an appeal against the order of the Learned Single Judge and that the appeal

has been admitted by a Division Bench of this Court. The grant of interim relief to the Fourth Respondent during the pendency of arbitral proceedings is the subject matter of pending proceedings before this Court in the appeal before the Division Bench. In these circumstances, it would be inappropriate for this Court to exercise its jurisdiction in these proceedings and to pass orders which would have the effect of vacating or modifying the interim order passed by the Learned Single Judge in competent proceedings instituted under the Arbitration and Conciliation Act, 1996. We express no opinion on the correctness of the order of the Learned Single Judge since that would be the subject matter of adjudication in the pending appeal. Among the reliefs that have been sought by the Petitioner in these proceedings is a direction to the Union Government to revoke and cancel the FM Radio Licences granted in favour of the Fourth Respondent. Such relief cannot be granted in these proceedings since there is an order of injunction which operates in the Arbitration Petitions restraining the termination of the Licence Agreements. The Petitioner seeks by these proceedings, the monitoring by this Court of the arbitration

proceedings and permission to him to intervene in the arbitration proceedings. We find no justification for the Court to do so or to grant to the Petitioner the relief which has been sought in these proceedings. Above all, as we have noted, we are not satisfied that the proceeding before us, constitutes a bona fide attempt to espouse a cause in the public interest. The Petitioner has no demonstrable credentials and as already noted earlier, it has been brought to our attention that the Petitioner had chosen to espouse the remedy of a public interest petition to challenge the broadcast of a TV programme by the Sixth Respondent. Those proceedings were dismissed by this Court. The remedy of a public interest petition is based on high constitutional imperatives and must not be allowed to be misused by an interloper. We, therefore, dismiss this petition.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.